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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

06-CR-20-BR

Plaintiff,

OPINION AND ORDER

v.

STEVEN WAYNE DIVINE,

Defendant.

KARIN J. IMMERGUT
United States Attorney
DWIGHT C. HOLTON
Assistant United States Attorney
1000 S.W. Third Ave., Suite 600
Portland, OR 97204-2902
(503) 727-1000

Attorneys for Plaintiff

STEVEN WAYNE DIVINE
#66992-065
FCI-Phoenix
37910 N. 45th Avenue
Phoenix, AZ 85086-7055

Defendant, *Pro Se*

1 - OPINION AND ORDER

BROWN, Judge.

This matter comes before the Court on Defendant Steven Wayne Divine's Motion (#68) for Order Enjoining Federal Bureau of Prisons from Collecting FRP Obligation.

For the reasons that follow, the Court **DENIES** Defendant's Motion and **DIRECTS** the Clerk to transfer this matter to the District of Arizona for further proceedings.

BACKGROUND

On October 3, 2003, Defendant was convicted in the Western District of Washington of seven counts for Bank Fraud in violation of 18 U.S.C. § 1344 and five counts for Uttering Forged Instruments in violation of 18 U.S.C. § 514(a)(1) and (a)(2). Defendant was sentenced to a term of 33 months imprisonment, and the court ordered Defendant to pay restitution of \$35,411.02 through the Inmate Financial Responsibility Program (IFRP) during his incarceration.

In January 2006, Defendant was released from prison, and his supervised release was transferred to the District of Oregon. On February 20, 2007, the Court revoked Defendant's supervised release and sentenced Defendant to a term of 36 months imprisonment. Defendant is currently serving his sentence at the Federal Correctional Institution in Phoenix, Arizona.

On April 28, 2008, Defendant filed a Motion for Order

Enjoining Federal Bureau of Prisons from Collecting FRP Obligation.

DISCUSSION

Defendant asserts only the Court has the authority to set a schedule of restitution payments while an inmate is in prison and that authority cannot be delegated to the Bureau of Prisons (BOP). *See United States v. Gunning*, 401 F.3d 1145 (9th Cir. 2005). Thus, Defendant seeks an order enjoining Arizona BOP officials from collecting his restitution payments pursuant to the IFRP and from retaliating against Defendant for filing his Motion.

The government, however, contends this Court lacks jurisdiction over Defendant's Motion. Specifically, the government asserts Defendant's Motion challenges the conditions of his confinement and, therefore, must be construed as a petition for habeas corpus pursuant to 28 U.S.C. § 2241 and brought in the United States District Court for the District of Arizona where he is incarcerated.

"Generally, motions . . . that challenge the manner, location, or conditions of a sentence's execution must be brought pursuant to § 2241 in the custodial court." *Hernandez v. Campbell*, 204 F.3d 861, 864 (9th Cir. 2000) (citations omitted). Courts have concluded a defendant's challenge to participation in

the IFRP program is a challenge to the execution of his sentence and, therefore, is cognizable under § 2241. See, e.g., *Geiger v. Fed. Bur. of Prisons*, 487 F. Supp. 2d 1155, 1160 n.8 (C.D. Cal. 2007) (citing *Montano-Figueroa v. Crabtree*, 162 F.3d 548, 549-50 (9th Cir. 1998) (challenge to IFRP as improper intrusion on sentencing court's authority may be brought under § 2241); *Matheny v. Morrison*, 307 F.3d 709, 711-12 (8th Cir. 2002) ("The . . . claims of the petitioners challenging the IFRP's payment schedule for their respective financial obligations . . . concern the execution of [their] sentence[s], and are therefore correctly framed as § 2241 claims brought in the district where the sentence is being carried out."); *Mujahid v. Crabtree*, 999 F. Supp. 1398, 1401-04 (D. Or. 1998) (a § 2241 petition is proper when petitioner, who declined to participate in IFRP, challenges IFRP requirements as conflicting with sentence and usurpation of judicial authority)).

This Court finds Defendant's Motion concerns the execution of his sentence and, therefore, is properly construed as a Petition for Habeas Corpus under § 2241. As noted, however, a Petition pursuant to § 2241 must be brought in the "custodial court." *Hernandez*, 204 F.3d at 864. The Court, therefore, concludes it lacks jurisdiction over this matter because Defendant must bring his claim based on the execution of his sentence under § 2241 in the District of Arizona. Accordingly,

the Court transfers this matter to the District of Arizona where Defendant is incarcerated for further proceedings.

CONCLUSION

For these reasons, the Court **DENIES** Defendant's Motion (#48) for Order Enjoining Federal Bureau of Prisons from Collecting FRP Obligation. The Court **DIRECTS** the Clerk of Court to transfer this matter to the District of Arizona for further proceedings.

IT IS SO ORDERED.

DATED this 19th day of August, 2008.



ANNA J. BROWN
United States District Judge